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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Clinton Joseph Slone,

Plaintiff,

vs.

Dora Schriro, et al.,

Defendants.

No. CV 04-2548-PHX-MHM (DKD)

**ORDER**

Plaintiff Clinton Joseph Slone, a *pro se* inmate, filed a civil rights action pursuant to 42 U.S.C. § 1983. Both parties filed numerous and various motions. Among other rulings, the Court will allow the instant action to proceed against Defendants Director of Arizona Department of Corrections (ADC) Dora B. Schriro, Deputy Warden D.W. Klein, Deputy Warden D.W. Schweitzer, Capt. Carroll, and Sgt. Carlin as to Plaintiff's claims that his constitutional rights were violated because (1) he was placed in maximum security in retaliation (Count I); (2) Schriro, Klein, and Carlin moved him to an unsanitary shower cell (Count III); (3) Schriro and Schweitzer failed to protect him when in November 2004 he was placed in general population despite being labeled a snitch (Count IV); and (4) Schriro, Carroll, and Carlin violated his due process during disciplinary proceedings (Count VI) (Doc. #9).

**I. Background**

Plaintiff Clinton Joseph Slone filed a First Amended Complaint naming as Defendants ADC, Schriro, Klein, Schweitzer, Carroll, and Carlin (Doc. #9). Plaintiff alleged that his constitutional rights were violated because (1) his placement into maximum security was

1 retaliatory; (2) Schriro and Carlin failed to protect him when in May 2004 he was placed with  
2 a violent inmate; (3) Schriro, Klein, and Carlin moved him to an unsanitary shower cell;  
3 (4) Schriro and Schweitzer failed to protect him when in November 2004 he was placed in  
4 general population despite being labeled a snitch; (5) Schweitzer failed to protect him when  
5 in March 2005 he was housed with a violent inmate; (6) Schriro, Carroll, and Carlin violated  
6 his due process during disciplinary proceedings; and (7) Schriro, Klien, and Carlin subjected  
7 him to overcrowded conditions (Id.).

## 8 **II. Motions to Reconsider**

9 Plaintiff moved for summary judgment as to certain defendants and claims, and  
10 Defendants moved to dismiss the original complaint for failure to exhaust (Docs. ##19, 39).  
11 Plaintiff then filed a moved for Leave to file a Second Amended Complaint (Doc. #87).  
12 Plaintiff indicated that he was waiving several claims and his claims against Schweitzer  
13 (Doc. #97). In October 2006, the Court denied Plaintiff's Motion for Summary Judgment  
14 and Defendants' Motion to Dismiss, and ordered Plaintiff's First Amended Complaint served  
15 (Doc. #95).

16 Defendants moved for reconsideration of this Court's order, arguing that Plaintiff  
17 obviously wanted to proceed with his Second Amended Complaint and dismiss Schweitzer  
18 (Doc. #98). Plaintiff filed a response, and then moved to withdraw his Motion to Amend  
19 (Doc. #104). Plaintiff stated that he wanted to waive claims II, V, and VII (Id.). Notably,  
20 Plaintiff did not indicate that he wished to dismiss Schweitzer (Id.). Defendants conceded  
21 to the withdrawal, arguing that if Plaintiff wished to continue against Schweitzer they would  
22 object to the motion (Doc. #108). Plaintiff also filed a Motion to Revisit this Court's order,  
23 arguing that ADC waived immunity (Doc. #103).

24 Initially, Plaintiff's Motion for Leave to File Excess Pages (Doc. #96) will be granted  
25 and Defendants' Motion to Strike (Doc. #100) will be denied. In addition, because, despite  
26 Defendants' argument, Plaintiff obviously wants to proceed with his First Amended  
27 Complaint, Defendants' Motion for Reconsideration (Doc. #98) will be denied. Plaintiff has  
28 named Schweitzer in his First Amended Complaint and has not waived any claims against

him (Doc. #9). However, if Plaintiff wishes to dismiss Schweitzer, the Court encourages Plaintiff to file a separate motion to dismiss. As requested by Plaintiff, Counts II, V, and VII will be dismissed.

Thus, the current Defendants in the instant action are Schriro, Klein, Schweitzer, Carroll, and Carlin (Doc. #9). Plaintiff's current claims are that his constitutional rights were violated because (1) he was placed in maximum security in retaliation (Count I); (2) Schriro, Klein, and Carlin moved him to an unsanitary shower cell (Count III); (3) Schriro and Schweitzer failed to protect him when in November 2004 he was placed in general population despite being labeled a snitch (Count IV); and (4) Schriro, Carroll, and Carlin violated his due process during disciplinary proceedings (Count VI) (Id.).

Plaintiff's Motion to Revisit (Doc. #103) will be denied. ADC is entitled to Eleventh Amendment Immunity and is not a person within the meaning of § 1983. See Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 100 (1984) (providing that under the Eleventh Amendment to the Constitution of the United States, a state or state agency may not be sued in federal court without its consent); Hale v. State of Arizona, 993 F.2d 1387, 1398 (9th Cir. 1993) (*en banc*) ( providing that ADC is not a person within the meaning of § 1983).

## **II. Discovery Motions**

Plaintiff moved to compel discover (Doc. #75). Defendants responded and Plaintiff replied (Docs. ##78, 83). Defendants now seek to file a sur-reply and Plaintiff seeks to respond to Defendants' sur-reply (Docs. ##84, 86). Defendants and Plaintiff's motions will be granted and their sur-reply and reply will be considered. Plaintiff's Motion to Compel will be addressed in a separate order.

### **IT IS ORDERED:**

(1) Defendants' Motion for Leave to File Sur-Reply (Doc. #84) and Plaintiff's Motion for Leave to File Reply (Doc. #86) are **granted**.

(2) Plaintiff's Motion for Leave to File Excess Pages (Doc. #96) is **granted**.

(3) Defendants' Motion to Strike (Doc. #100) is **denied**.

1 (4) Defendants' Motion for Reconsideration (Doc. #98) and Plaintiff's Motion for  
2 Reconsideration (Doc. #103) are **denied**.

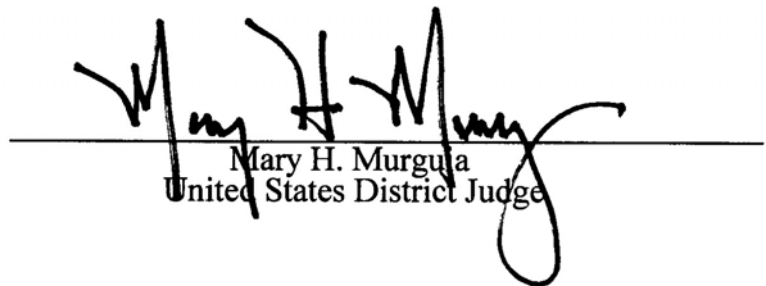
3 (5) Plaintiff's Motion to Withdraw his Motion to Amend (Doc. #104) is **granted**.

4 (6) Plaintiff's Motion to Amend (Doc. #87) is **denied**.

5 (7) Counts II, V, and VII of Plaintiff's Amended Complaint (Doc. #9) are **dismissed**.  
6 Plaintiff's action will proceed against Schriro, Klein, Schweitzer, Carroll, and Carlin as to  
7 Counts I, III, IV, and VI.

8 DATED this 12<sup>th</sup> day of February, 2007.

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Mary H. Murgula  
United States District Judge